

**HOLY CROSS HOME SCIENCE COLLEGE
THOOTHUKUDI**

BUSINESS LAW PLEDGE

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*CONTRACTS OF
BAILMENT & PLEDGE*

INTRODUCTION

The word bailment is derived from the French word bailer which means to deliver. It means any kind of handing over of goods from one person to another. Bailment implies voluntary change of possession from one person to another. A contract of bailment like any other contract, is a special type of business contract. The rules governing the contracts of bailment & pledge are defined in sections 148-181 of the Indian Contract Act.

DEFINITION

According to section 148 of the Indian Contract Act, "A bailment is the delivery of goods by one person to another for some purpose upon a contract that they shall when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the persons delivering them."

TYPES OF CONTRACTS OF BAILMENT

Bailment may be broadly be classified under the following four heads:

➤ *On The Basis Of Objective*

- a. Bailment for safe custody
- b. Bailment for use
- c. Bailment for repair
- d. Bailment for carriage
- e. Bailment for alteration in shape
- f. Bailment by pledge

➤ *On The Basis Of Intention Of Parties*

- a. Voluntary Bailment
- b. Involuntary Bailment

➤ *On The Basis Of Interest Of Parties*

- a. For The Benefit Of The Bailor Only
- b. For The Benefit Of The Bailee Only
- c. For The Benefit Of Both

➤ *On The Basis Of Consideration*

- a. Gratuitous Bailment
- b. Non Gratuitous Bailment

DUTIES & RESPOSIBILITIES OF A BAILOR

- Delivery Of The Goods To The Bailee
- To Disclose Faults In The Goods Bailed
- To Repay The Necessary Expenses
- Liability On The Breach Of Bailment Before The Expiry Of The Time Fixed
- To Indemnify The Bailee
- To Pay The Remuneration Of the Bailee
- To Take The Goods Back

RIGHTS OF BAILOR

- Rights Of Indemnity For The Losses Due To Negligence By Bailee
- Termination Of Contract
- Compensation On Unauthorised Used By The Bailee
- Compensation On Mixing The Goods By Bailee, With His Own Goods
- Right To Take Back Goods At Any Time In Case Of Gratuitous Bailment
- Right To Get The Goods Back
- Compensation On Non Return Of Goods
- Entitled To Get Profit From Goods Bailed

DUTIES & RESPONSIBILITIES OF BAILEE

- To Take Care Of The Goods
- Not To Do Any Act Inconsistent With The Terms Of Bailment
- Not To Make Unauthorised Use
- Not To Mix Bailor's Good With His Own Goods
- To Return The Goods Bailed
- To Return Any Accretion Or Profit
- Not To Set UP Any Adverse Title

RIGHTS OF BAILEE

- Right Of Compensation On Account Of Faults In Goods Bailed
- Right To Receive Necessary Expenses
- Pre-mature Termination Of Contract Of Bailment
- Compensation In Case Of Defective Title
- Delivery OF Goods To One Of The Joint Owner
- Right To Interplead
- Right Of Particular Lien
- Right Of General Lien
- Right Against Third Party
- Right To Get Share In Compensation

FINDER OF THE GOODS LOST

According to the section 71 of the Indian Contract Act, "A person who finds goods belonging to another & takes them into his custody, is subject to the same responsibility as bailee." In this situation the law imposes a contract of bailment between the finder of goods & the true owner of the goods.

RIGHTS OF FINDER OF GOODS

- Lien On Goods
- Suit For Reward
- Right Of sale Of Goods

DUTIES OF THE FINDER OF GOODS

- To Take The Reasonable Care Of Goods
- Not To Mix Goods With His Own Goods
- Try To Find Out The Real Owner Of The Goods
- To Return Back The Goods To The True Owner
- To Deliver Any Accretion To The Goods To The True Owner

LIEN

Lien is the right of any person to retain the possession of goods belonging to someone else until the claims/charges due to the person in possession of goods are paid. These claim may be elated with the use of labour & skill by the bailee on those goods.

According to T.R Desai, "Lien is a right in one man to retain that which is in his possession belonging to another, until certain demands of the person in possession are satisfied."

CHARACTERISTICS OF LIEN

- Possession Of Goods
- Origin
- Mode Of Possession
- Continuity
- Rights To Use
- Right Of Stoppage Only
- Limited Time Period

TYPES OF LIEN

Lien may be of two types:

- **Specific Lien:** A specific lien or a particular lien is one which is available to the bailee only against those goods in respect of which he has rendered a service involving labour & skill in terms of time & effort.
- **General Lien:** A general lien implies the right to retain any item till the general account of the holder is settled.

Following Persons Can Use The General Lien

- Bankers
- Factors
- Whar-fingers
- Attorney Of High Courts
- Policy Brokers
- Any Other Person

PLEDGE

Pledge or pawn is a special kind of bailment where a movable thing is bailed as security for the repayment of a debt or performance of promise.

Example: If you borrow Rs10,000 from X & keep your jewellery as security for repayment. It is a contract of pledge.

According to section 172 of the Indian Contract Act, "The bailment of goods as security for payment of a debt or performance of a promise is called pledge."

ESSENTIALS OF A VALID PLEDGE

- Pledge Of Movable Goods Only
- Delivery Of Goods
- Judicial Possession Of The Goods
- Saleable Commodity
- Return Of Goods

RIGHTS OF PLEDGER

- Right To Get The Goods Back
- Right On Increase Or Profit
- Right Of Compensation
- Right To Get The Surplus In Case of Sale
- Defaulting Pawnor's Rights

DUTIES OF PLEDGER

- To Disclose Defects In The Goods Pledged
- Duty To Pay The Debt
- To Pay The Necessary Expenses
- Duty After sale

RIGHTS OF PLEDGEE

- Right To Retain The Goods Pledged
- Right To Retain For Subsequent Advances
- Right Regarding Extra-Ordinary Expenses
- Right To File A Suit On Pledger
- Right Of Sale Of Goods
- Better Title

DUTIES OF PLEDGEE

- *To Take Reasonable Care Of Goods*
- *Not To Make Personal Use Of Goods Pledged*
- *Not To Mix Pledged Goods With His Own Goods*
- *Not To Purchase The Goods*
- *Duty To Return The Excess Money*
- *Return The Goods*

PLEDGE BY NON-OWNER

- Pledge By Mercantile Agent
- Pledge By Persons Having Possession Under Voidable Contracts
- Pledge Where Pledger Has Limited Interest In Goods
- Pledge By Co-Owner
- Pledge By Seller Having Possession Of Goods Before & After Sale

THANKS